

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

JAY HANNAH,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC.,

Defendant.

Civil Action No. 2:20-cv-120

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendant United Parcel Service, Inc. (“UPS” or “Defendant”), through its undersigned counsel, hereby gives notice of removal of the above-captioned action from the Circuit Court of Wood County, West Virginia to the United States District Court for the Southern District of West Virginia, Charleston Division. For the reasons stated below, removal of this action is proper because Plaintiff purports to allege violations of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* (“ADA”). Therefore, this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. As grounds for removal, Defendant further states as follows:

STATE COURT ACTION

1. Plaintiff Jay Hannah commenced this action by filing a Complaint on or about January 13, 2020 against UPS in the Circuit Court of Wood County, West Virginia, captioned *Jay Hannah v. United Parcel Service, Inc.*, Civil Action No. 20-C-3.

2. Plaintiff alleges in his Complaint that he suffered a disabling back injury while working at UPS, and UPS failed to accommodate him and discriminated against him by placing

him out of work until he could return without restrictions. (*See* Exhibit A.) Plaintiff's Complaint asserts two claims against UPS pursuant to Title I of the ADA, 42 U.S.C. § 12101, *et seq.*: (1) Failure to accommodate, and (2) disability discrimination. (*Id.*) The Complaint does not include any claims pursuant to State law.

3. UPS's registered agent was served with the Summons and Complaint by certified mail on January 15, 2020. The instant Notice of Removal is timely, in that it is being filed within thirty (30) days from the date UPS was served with the Summons and Complaint. *See* 28 U.S.C. §1446(b).

5. A true and correct copy of the Summons and Amended Complaint served on UPS in this matter are attached hereto as **Exhibit A**. No other pleadings or discovery have been served in this action, nor has any court order been entered. A copy of the most recent docket sheet from the Wood County Circuit Clerk is attached hereto as **Exhibit B**.

GROUND FOR REMOVAL

6. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1331, which provides that the district courts shall have original jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." This action may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446 in that it raises a federal question.

7. The Complaint clearly cites to the ADA, 42 U.S.C. § 12101, *et seq.*, as the basis for both of Plaintiff's claims against UPS. Thus, there is no question that the lawsuit "arises under" federal law and invokes the Court's federal question jurisdiction pursuant to 28 U.S.C. § 1331.

REMOVAL REQUIREMENTS

8. Plaintiff originally filed this action in the Circuit Court of Wood County, West Virginia, and accordingly, pursuant to 28 U.S.C. §§ 129, 1441(a), the Charleston Division of the

United States District Court for the Southern District of West Virginia is the proper forum for removal.

9. In accordance with 28 U.S.C. § 1446(a), all process, pleadings, and orders that have been served upon Defendant to date in this matter are attached to this Notice of Removal as **Exhibit A**. A copy of the Circuit Court docket sheet is attached hereto as **Exhibit B**.

10. This Notice of Removal has been signed by counsel for Defendant, in compliance with the requirements of 28 U.S.C. §1446(a) and Rule 11 of the Federal Rules of Civil Procedure.

11. In accordance with 28 U.S.C. § 1446(d), a true and complete copy of this Notice of Removal will be filed with the Clerk of the Circuit Court of Wood County, West Virginia and served upon Plaintiff.

WHEREFORE, Defendant United Parcel Service, Inc. removes the above-captioned action to this Court, and respectfully requests that this Court accept jurisdiction of this action and that this action be henceforth placed on the docket of this Court for all further proceedings as though the same action had been originally commenced in this Court.

Dated: February 11, 2020

Respectfully submitted,

LITTLER MENDELSON, P.C.

/s/ Richard M. Wallace

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United Parcel Service, Inc.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of February, 2020, a true and correct copy of the foregoing **Notice of Removal** was filed via the Court's electronic filing system. Notice of filing will be performed by the Court's electronic filing system, and the following parties may access the document through the electronic filing system:

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Huntington, WV 25701

Counsel for Plaintiff

/s/ Richard M. Wallace

Richard M. Wallace (WV Bar No. 9980)